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Army Corps Seeks to Relax Wetlands Rules

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The Army Corps of Engineers is trying to relax a series of year-old rules designed to restrict development and degradation of thousands of streams and other wetlands, angering environmentalists and drawing sharp criticism from other federal agencies.

Last spring, the Corps won praise from conservationists -- and provoked a lawsuit by the nation's home builders -- by making it much harder for developers to secure "general" permits to drain or fill wetlands, forcing them to seek more onerous "individual" permits for all but the least intrusive projects. But now the Corps has proposed more than a dozen measures that would roll back some of the stricter mandates, while giving the agency much more flexibility to decide who needs the tougher permits on a case-by-case basis.

For example, in a May 10 draft plan obtained by The Washington Post, the Corps proposed eliminating a rule that any project disturbing more than 300 feet of streams would require the stricter permit. Now the developer would only have to notify the Corps of the potential impacts. The agency also suggested loosening various requirements for subdivisions, roads across water and certain flood control projects. And it wants to kill a rule that developers must replace or protect at least as many acres of wetlands as they disturb.

Overall, the proposed changes would make it significantly easier for builders to develop wetlands because the Corps plays a major role in regulating the development of the environmentally sensitive areas. Wetlands -- including streams, bogs and seasonally flooded farmland -- provide important habitat for wildlife as well as flood protection and water purification for human beings, and President Bush has pledged to protect them.

The proposal may force the White House to mediate this contentious issue, at a time when the administration is trying to counter criticisms

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that it has been siding too often with business interests on environmental issues. Conservationists say the president may have to decide whether to align himself with the Corps or with the rest of his environmental agencies, which oppose the changes.

Corps regulatory chief John Studt defended the proposed changes, saying they would eliminate bureaucratic review processes without weakening environmental protections, allowing his regulators to spend more time analyzing projects with more significant environmental risks.

Studt played down the proposal's effects. He noted that streamlined general permits are supposed to be issued for projects with "minimal" impacts, and that many can fit the bill even if they do affect, for example, 300 feet of streams.

"Streams can be extremely small," Studt said. "Some of those ephemeral streams, especially out West, most of the general public wouldn't view them as streams at all."

Studt added, however, that the Corps will delay issuing the plan to the public for two or three weeks while it considers criticisms from other federal agencies involved in regulating wetlands.

The Environmental Protection Agency, the Fish and Wildlife Service, the National Marine Fisheries Service and the Office for Surface Mining have all raised formal objections to aspects of the proposed changes.

"I am concerned that this draft proposal would eliminate and weaken some of the environmental improvements that are critical to ensuring . . . minimal individual and cumulative effects on the aquatic environment," wrote Robert Wayland, director of the EPA's wetlands office.

The environmental agencies did praise the Corps for retaining its rule -- finally adopted last spring after years of negotiations and environmental lawsuits -- requiring individual permits for all developments affecting more than a half-acre of wetlands. The old rule was three acres, and before that 10 acres.

But several officials complained that the Corps has not fulfilled its promises to analyze the environmental impacts of its current permits, and has not fulfilled its responsibility to consult other agencies before launching new wetlands rules.

They warned that the new changes could allow the Corps to rubber-stamp thousands of additional projects to build everything from driveways to drainage pipes to mountaintop mining operations in sensitive areas.

"We're not pleased," said Benjamin Tuggle, federal programs chief for the Fish and Wildlife Service. "These changes will significantly weaken



environmental protections."

Conservationists also attacked the proposals. By removing specific requirements, such as the 300-foot rule, and by increasing its own discretion, the Corps is opening the possibility for more paving of watersheds and limiting the ability of environmentalists to sue to stop it, they said.

"It's a surgical removal of teeth," said Daniel Rosenberg, an attorney for the Natural Resources Defense Council. "It's an outrageous attempt to undercut the law."

The National Association of Home Builders sued the Corps over its 2000 rules, arguing that the agency was making it far too difficult to proceed with minor projects. The association is still unhappy about the unchanged half-acre limit, but Vice President Susan Asmus said the Corps is "certainly moving in the right direction" with the new proposal.

"The program they put together last year is just unwieldy," she said.

The Corps has long been criticized for failing to aggressively protect wetlands. The agency issues more than 80,000 general permits each year for work on wetlands with virtually no review. And it is nearly as generous with developers who seek the somewhat individual permits, saying yes -- after detecting no "significant" impact -- about 99 percent of the time. In several recent federal court decisions, judges have chastised the Corps for ignoring the cumulative environmental damages of the projects it approves.

After a barrage of criticism last year, the Corps has been trying to improve its environmental reputation. Gen. Robert B. Flowers, the agency's new commander, vowed in a recent interview that the Corps will focus more on cumulative effects, and will do more to mitigate the environmental damage of its own water-related projects and the ones it approves. The agency has also proposed controversial changes to the Missouri River's flow to protect endangered species, and the Bush administration has pledged to rein in ecologically unacceptable Corps projects. At the same time, though, Flowers has defended his embattled agency, insisting that a major overhaul is unnecessary.

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